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**RESPONSE TO COMMENTS  
ON PROPOSED AMENDMENTS TO 310 CMR 50.00  
TOXICS USE REDUCTION**

Regulatory Authority:  
M.G.L. Chapter 21I, §§ 3, 10, 11, and 12

June 2007

## SUMMARY

In January 2007, the Massachusetts Department of Environmental Protection (MassDEP) proposed revisions to 310 CMR 50.00, *Toxics Use Reduction*, and made available a technical support document describing the proposed regulatory revisions.

The revisions to 310 CMR 50.00 are designed to implement statutory amendments to the Toxics Use Reduction Act (TURA, M.G.L. Chapter 21I) that were signed into law in July 2006. These regulatory revisions implement new reporting provisions that affect calendar year 2006 toxics use reports that are due by July 1, 2007. In Summer 2007, MassDEP will propose a second set of regulatory revisions to implement new planning options that affect toxics use reduction plans due by July 1, 2008.

MassDEP held three public hearings and solicited public comment on the proposed revisions in accordance with M.G.L. Chapter 30A. MassDEP published notice of the public hearings and comment period in the Springfield Republican and the Boston Globe, and notified interested parties via electronic mail of the public hearings and comment period. Public hearings were held on the following dates and public comments were accepted until March 5, 2007:

Hearings Held:	February 20, 2007 in Boston, Massachusetts
	February 21, 2007 in Worcester, Massachusetts
	February 22, 2007 in Springfield, Massachusetts

MassDEP did not receive any oral comments at the public hearings, but did receive four written comments during the public comment period. These comments are summarized below, along with MassDEP's response to each comment. The comments did not raise significant substantive issues, and aside from several minor technical corrections, MassDEP did not make any changes to the final regulation revisions based on public comments. The following people/organizations submitted comments:

Daryl Beardsley  
Neil Inglis, Goldman Environmental Consultants, Inc.  
Shawn Konary, Mirant Canal, LLC and Mirant Kendall, LLC  
Robert Rio, Associated Industries of Massachusetts

## COMMENTS AND RESPONSES

**1. Comment:** One commenter thanked MassDEP for its speedy implementation of the changes made by the 2006 TURA amendments and was generally supportive of the regulations, stating that they will result in real environmental improvements at lower costs to the business community and MassDEP.

**Response:** MassDEP appreciates this comment.

**2. Comment:** One commenter raised concern about replacing reporting of the byproduct reduction index (BRI), emissions reduction index (ERI) and the base year with reporting of year-

to-year comparisons of changes in absolute amounts of toxics used and byproduct generated. By tracking progress only from year to year, TUR progress over several years will be lost. Also, tracking toxics use and byproduct changes in absolute amounts will not account for changes in production, and therefore will not measure true toxics use reduction progress. The commenter suggested that facilities be given the choice to report from a base year and report changes normalized for production (i.e., per unit of product).

**Response:** The 2006 TURA statutory amendments replaced reporting of the BRI, ERI, and base year with changes in toxics used and byproduct generated compared to the previous year, so MassDEP must adhere to these statutory changes in the TUR regulations. MassDEP considered requiring reporting of the yearly change in toxics use and byproduct on a production-adjusted basis, but believed reporting in absolute amounts would be simpler and less confusing. However, the revised reporting requirements do include reporting of technique codes to explain why changes occurred, and also contain a comments field that allow toxics users to report production-adjusted progress if they so choose.

**3. Comment:** One commenter pointed out several typos in the draft regulations. This commenter also expressed concern about the amendment to 310 CMR 50.33(3), which states that if the reported input data do not balance with reported output data, an explanation should be provided why there is not a “mass balance.” The commenter noted that there could be variance in reported mass balance and that this can be difficult to accurately explain materials imbalances without more specific information or additional testing (which is not required under TURA).

**Response:** MassDEP has corrected the typos noted in the comment. MassDEP recognizes that a mass balance is not always possible when reporting toxics inputs and outputs. While the regulations require an explanation for any imbalance between inputs and outputs, they do not require additional testing. Facilities should provide their best explanation based on the data they do have. MassDEP has made a minor wording change to the regulations in 50.33(3) to clarify that the regulations only require a general explanation for an imbalance between inputs and outputs.

**4. Comment:** One commenter raised concern about adding a higher hazard substance category in the regulations before knowing what specific substances will be contained in that category. The commenter suggested that regulatory changes to the toxic and hazardous substance list in 301 CMR 41.00 specifying the list of higher hazard substances should be made in accordance with the public process requirements of Chapter 30A concurrently with the changes to 310 CMR 50.00, and therefore requested that MassDEP delay the current revisions to 310 CMR 50.00 regarding higher hazard substances.

**Response:** The revisions to 310 CMR 50.00 do not have an immediate effect on the categorization of any substance as a higher hazard chemical. The revisions add the statutory definition of a “higher hazard substance” and revise the definition of “threshold amount” based on the recent statutory changes, which lowers the reporting threshold for higher hazard

substances to 1,000 pounds.<sup>1</sup> These statutory amendments already are law, and the regulations are codifying what already is in effect. Before substances can be designated as higher hazard substances, the TURA Administrative Council must first promulgate regulatory revisions to 301 CMR 41.00 to designate such substances, and any such regulations would require public notice and a public hearing and comment process in accordance with c. 30A before being promulgated. Therefore, concerns about the designation of specific substances as higher hazard can be raised during that public process.

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<sup>1</sup> The statute also designates all persistent, bioaccumulative, toxics (PBT) chemicals as higher hazard substances, but PBTs already have reporting thresholds lower than 1,000 pounds so this designation does not change existing reporting or planning requirements.